

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In re the Matter of)

Review of the Commission's Rules)
regarding the Main Studio and local)
public inspection files of broadcast)
television and radio stations)

MM Docket No.97-138

To: The Commission

**PETITION FOR PARTIAL RECONSIDERATION
OF ASSOCIATION OF AMERICA'S PUBLIC TELEVISION STATIONS**

The Association of America's Public Television Stations ("APTS") hereby submits its Petition for Partial Reconsideration of the Commission's *Report and Order* in the above-captioned proceeding. APTS is a nonprofit membership association whose members comprise most of the nation's 358 public television stations. Among other things, APTS represents its membership on a national level by presenting the stations' views to the Commission, Congress, the Executive Branch and to other federal agencies and policy makers.

APTS fully supports the Commission's efforts to reduce the regulatory and administrative burdens imposed on broadcast licensees and welcomes the many changes in its rules aimed at achieving that end. Unfortunately, however, some of the changes adopted in the *Report and Order* increase, rather than reduce, regulatory burdens. In particular, the newly adopted rules (1) expand the types of applications that must be

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placed in the local public records file, (2) retain an anachronistic requirement that public television licensees include donor lists in that file, and (3) unnecessarily require public television licensees to summarize in their renewal applications letters received throughout their renewal term concerning violence in programming. For the reasons set forth below, APTS urges the Commission to (1) restore the former rule which required that only applications requiring public notice be placed in the local public records file, (2) eliminate the donor list requirement, and (3) relieve public television licensees of the need to summarize letters concerning violence in their renewal applications.¹

ARGUMENT

I. The Commission Should Reconsider Its Action Requiring That All Applications Be Placed In The Local Public Records File

Prior to the adoption of the *Report and Order*, Sections 73.3526 & 73.3527 of the Commission's rules required applicants and licensees ("applicants") to keep in their local public records file only those applications for which the applicant was required to broadcast or publish a local public notice. Since local public notice is not required for minor changes or for *pro forma* transfers of control or assignments, copies of those applications were not required to be placed in the local public records file.

This distinction between applications requiring public notice and those that did not require public notice was eliminated in the rules adopted in the *Report and Order*. Thus, new Section 73.3527(e)(2) requires applicants to include in their local public

¹ APTS also supports the position of the National Association of Broadcasters urging the Commission to modify the new requirement that licensees honor telephone requests for copies of documents in the local public record file. If the Commission does not eliminate

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records file “any application tendered for filing with the FCC . . .” The Commission did not explain why it was imposing this new and added requirement.

APTS believes the requirement to file all applications in an applicant’s local public records file is unwarranted. It is inconsistent with the Commission’s goal of reducing regulatory burdens, and it does not serve any regulatory purpose. Any information which might be contained in applications not subject to the public notice requirement will be reflected in the station’s current authorization and the licensee’s ownership report, both of which are required to be in the local public file. Moreover, since there are no procedures for public participation in connection with these applications, requiring applicants to keep them in their local public file will not enhance the public’s ability to bring public interest matters to the Commission’s attention.

Accordingly, APTS urges the Commission to reconsider its revised Section 73.3527(e)(2) and limit the filing requirement to applications for which local public notice is required.²

II. The Commission Should Abolish The Requirement That Public Broadcast Licensees Keep Donor Lists

Section 73.3527(e)(9) requires public broadcast licensees to keep “lists of donors supporting specific programs.” APTS urges the Commission to reconsider this requirement and eliminate it. As the University of North Carolina Center for Public Television demonstrated in its Comments in this proceeding, that requirement is an

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that requirement, APTS urges the Commission to make it clear that licensees have a reasonable period of time within which to respond to telephone requests.

² In all events, the Commission should clarify whether this new obligation is retroactive or only applies to applications filed after the effective date of the new rules.

anachronistic obligation carried over from the days when stations were required to keep program logs. This obligation was initially adopted as a deregulatory measure to relieve public broadcasters of the need to record in each program log the same underwriters for the same regularly scheduled programs, *i.e.*, those broadcast on a daily or weekly basis. Instead of repeating this information time and again, the Commission allowed public broadcasters to place the list of donors in their local public records file.³

There is no reason to retain this obligation since broadcasters are no longer required to keep logs.⁴ What was initially a relaxation of a regulatory burden has now become an unjustified regulatory obligation. Indeed, just as commercial broadcasters are not required to maintain lists of the sponsors of specific programs in their local public records files, public broadcasters should also not be required to maintain lists of donors. The broadcast of the underwriting credits in association with the broadcast of the program is sufficient to inform the public of the underwriters who support the program.

APTS recognizes that the Commission found that the donor list requirement was justified because “noncommercial educational stations are permitted to limit their on-air program sponsorship announcements to major donors or underwriters only, but must maintain a complete donor list in their public file.” *Report and Order* at ¶58. While APTS believes that the requirement is unnecessary even in those circumstances, the rule is not so limited. Rather, it requires that complete donor lists be maintained for all programs, even those accompanied by on-air acknowledgements of all donors. If the

³ See, *In the Matter of Reregulation and Oversight of the AM, FM and TV Broadcast Rules*, 77 FCC 2d 251 (1980).

⁴ See, *In the Matter of Programming Policies and Reporting Requirements Related to Public Broadcasting Licensees*, 98 FCC 2d 746 (1984).

Commission intends for the rule to apply to the limited circumstances set forth in the *Report and Order*, it should clarify the rule to make it applicable in those instances, *i.e.*, where donors and underwriters are not acknowledged on-air.⁵

II. The Commission Should Eliminate the Requirement That Public Television Licensees File Summaries Of Letters Concerning Violence In Their Programming

In its Comments in response to the Notice of Proposed Rule Making in this proceeding, APTS urged the Commission to clarify the obligation of public television licensees under Section 308(d) to retain copies of correspondence concerning violence in their programming. APTS sought that clarification because it read Section 308(d) to tie the requirement that a licensee summarize letters concerning violent programming to the requirement that copies of those letters be retained by a licensee “in accordance with Commission regulations.”⁶ Since public television licensees are not required to retain those letters, APTS was concerned that public television licensees might be subject to the more onerous regulatory burden of summarizing letters received during the entire

⁵ In addition, if the Commission retains the requirement, it should make it clear that stations, in lieu of keeping their own lists in their public files, may rely on PBS, APS, NPR, PRI and other distributors of programming to maintain these lists on their behalf so that every public broadcast station does not have to secure a copy of the complete donor lists and include them in their files.

⁶ Section 308(d) provides:

d) Summary of Complaints. -- Each applicant for the renewal of a commercial or noncommercial television license shall attach as an exhibit to the application a summary of written comments and suggestions received from the public and maintained by the licensee (*in accordance with Commission regulations*) that comment on the applicant's programming, if any, and that are characterized by the commentor as constituting violent programming (emphasis added).

renewal term while commercial broadcasters would be required to summarize only those letters received during the last three years of their renewal term – the retention period.

In its *Report and Order*, the Commission held that public television licensees are not required to retain letters from the public concerning violence, but also ruled that “all noncommercial television licensees [are required to] include in their renewal applications a summary of any letters they receive regarding violent programming.” *Report and Order* at ¶56. In so ruling, the Commission apparently read the parenthetical clause – “in accordance with Commission regulations” – in Section 308(d) to modify only the requirement that a licensee retain letters it receives.

APTS does not believe the Section 308(d) should be so construed. Because the Commission would have set the terms under which licensees were required to maintain those letters, Congress would not have had to modify the requirement that a television station maintain these letters “in accordance with Commission regulation” if that language only modified the retention requirement.⁷ However, a the better reading of the section is that the parenthetical applies to both the retention and reporting requirement and that television licensees only have to summarize the letters concerning violence that they are required to retain in accordance with the Commission’s rules.

Accordingly, APTS requests the Commission to reconsider its action and hold (a) that television licensees are required to summarize only those letters received during the period in which they are required to maintain copies in their local public records file and

⁷ If the parenthetical were eliminated, the section would require licensees to summarize letters “received from the public and maintained by the licensee that comment on . . . “ Since the Commission would, in the normal course, implement the retention

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(b) that public television licensees are not required to summarize letters concerning violence in their renewals because they are not required to retain such letters. As the Commission acknowledges in its *Report and Order*, “The issue of violent programming has almost exclusively been raised in connection with programming aired by commercial television licensees.” *Id.* at ¶56. Thus, violence in public television programming is not a regulatory concern; hence unnecessary regulatory burdens should not be imposed on public television stations.

Further, requiring noncommercial television licensees to summarize the letters they receive concerning violent programming effectively requires them to retain those letters. Unless they are retained, the licensee is not in a position to summarize such letters when the licensee prepares the renewal. Consequently, the Commission’s current approach does not relieve public television licensees of any material regulatory burden.

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requirements by rule, the parenthetical does not add anything unless it also modifies the requirement that a licensee summarize the letters.

Conclusion

For the reasons set forth above, APTS urges the Commission to (1) restore the former rule which required that only applications requiring public notice be placed in the local public records file, (2) eliminate the donor list requirement, and (3) relieve public television licensees of the need to summarize letters concerning violence in their renewal applications.

Respectfully submitted,



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